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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. [redacted] 1191

UNIVERSAL OIL PRODUCTS COMPANY,
Petitioner,

vs.

ROOT REFINING COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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IN THE

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October Term, 1944

No.

UNIVERSAL OIL PRODUCTS COMPANY,
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vs.

ROOT REFINING COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinions and Orders Below

The report of the Master, rendered pursuant to the order of the Court of Appeals, dated November 26, 1941, has not been reported but is annexed as Exhibit 14 to the petition (pp. 248-85) and is set forth at Volume I, Page 94 of the transcript of the record filed herewith.

The order of the Court of Appeals, dated June 15, 1944, is annexed as Exhibit 15 to the petition (pp. 355-6) and is set forth at Volume IX, Page 3661 of the transcript of the record filed herewith.

The opinion of the Court of Appeals, filed December 29, 1944, has not been reported but is annexed as Exhibit

17 to the petition (pp. 382-8) and is set forth at Volume IX, Page 3685 of the transcript of the record filed herewith.

The order of the Court of Appeals, dated December 29, 1944, is annexed as Exhibit 18 to the petition (pp. 389-90) and is set forth at Volume IX, Page 3692 of the transcript of the record filed herewith.

Jurisdiction

The facts supporting the jurisdiction of this Court are set forth in the petition.

Cases believed to sustain the jurisdiction of this Court are as follows:

United States Alkali Export Ass'n, Inc. et al. v. *U. S.*, U. S. , decided March 5, 1945;

In re 620 Church St. Corp., 299 U. S. 24, 26;

Holiday v. *Johnston*, 313 U. S. 342, 348, n. 2;

In re Chetwood, Petitioner, 165 U. S. 443, 462;

McClellan v. *Carland*, 217 U. S. 268;

Union Pac. R. R. Co. v. *Weld County*, 247 U. S. 282;

Spiller v. *Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117.

Statement of Facts

The facts are sufficiently set forth in the petition.

Specification of Errors

If the writ is granted, petitioner will urge that the Court of Appeals in the instant proceeding erred in the following respects:

1. In refusing to hold that the instant proceeding did not constitute a case or controversy within the meaning of Article III, Sections 1 and 2, of the Constitution of the United States.

2. In refusing to hold that there were, in the instant proceeding, no adverse parties with adverse interests.

3. In entering the order, dated November 26, 1941, captioned in the consolidated cause entitled "*Root Refining Company, Defendant-Appellant*, vs. *Universal Oil Products Company, Plaintiff-Appellee*", directing that an investigation be conducted by the Master and that, in such investigation, established rules of evidence be disregarded.

4. In entering the orders, dated June 15, 1944, and December 29, 1944.

5. In refusing to hold that the Court of Appeals had no power to award any counsel fees or expenses to *Amici Curiae* in the instant proceeding.

6. In refusing to hold that *Amici Curiae* were not entitled to any counsel fees and expenses in the instant proceeding.

7. In awarding to *Amici Curiae* compensation and expenses, in disregard of the limitations upon its power to grant costs imposed by statute, the orders promulgated by

this Court, and the Rules adopted by the Court of Appeals pursuant thereto.

POINT I

The Court of Appeals, in assuming jurisdiction in the instant proceeding, acted contrary to the decisions of this Court and other Circuit Courts of Appeal.

The jurisdiction of courts of the United States is limited by the Constitution to cases or controversies (Constitution, Article III, Sections 1, 2). The case or controversy must be actual. *Coffman* v. *Breeze Corporations, Inc.*, 89 L. Ed. 255, decided January 2, 1945; *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227; *Willing* v. *Chicago Auditorium*, 277 U. S. 274; *Liberty Warehouse Co.* v. *Grannis*, 273 U. S. 70; *New Jersey* v. *Sargent*, 269 U. S. 328; *Muskrat* v. *United States*, 219 U. S. 346; *Smith* v. *American Asiatic Underwriters, Federal*, 9 Cir., 127 F. (2d) 754. The powers of the court invoked must be strictly judicial in their nature. *Muskrat* v. *United States*, 219 U. S. 346, 356; *Lord* v. *Veazie*, 8 How. 251; *Osborn* v. *U. S. Bank*, 9 Wheat. 738. An absolute *sine qua non* of an actual controversy is the initial and continued existence of adverse parties asserting adverse interests. *Muskrat* v. *United States*, 219 U. S. 346; *South Spring Gold Co.* v. *Amador Gold Co.*, 145 U. S. 300; *Cleveland* v. *Chamberlain*, 1 Black 419; *Lord* v. *Veazie*, 8 How. 251; *O'Donnell* v. *United States*, 9 Cir., 91 F. (2d) 14. The interest asserted must be a personal and a private interest, as opposed to one asserted *pro bono publico*. *Liberty Warehouse Co.* v. *Grannis*, 273 U. S. 70; *New Jersey* v. *Sargent*, 269 U. S. 328; *Massachusetts* v. *Mellon*, 262 U. S. 447; *Fairchild* v.

Hughes, 258 U. S. 126; *State of Georgia* v. *Stanton*, 6 Wall. 50; *Osborn* v. *U. S. Bank*, 9 Wheat. 738.

Judged by these principles, the instant proceeding in which the Court of Appeals purported to act and to enter the several orders set forth in the petition was not a case or controversy under the Constitution and, consequently, the Court of Appeals was wholly without power to act in a judicial capacity therein.

Although the action taken was captioned in the *Root* case, no controversy then existed between Root and Universal, the only parties thereto. Root had settled its controversy with Universal (Ex. 1, pp. 40-2, 48, 60-1; v. I, pp. 6, 13, 24)*, and declined to make itself a party or to be made a party, concededly preferring the settlement to the hazard of reopening the case and rearguing the appeal (Ex. 1, pp. 42, 62; v. I, pp. 8, 25-6); indeed, Root, though counsel for petitioner offered to preserve the settlement and consent to the setting aside of the judgments and the rearguing of the appeals (Ex. 1, p. 62; v. I, pp. 25-6), showed no disposition to avail itself of this opportunity and never, to this date, has appeared or asserted any further right or interest in that case.

Thus, any controversy which may have previously existed between Root and Universal had become moot prior to the commencement of the instant investigation. The Court of Appeals, therefore, would have been without power to enter a binding decree in the present proceeding, even upon the application of Root. *St. Pierre* v. *United States*, 319 U. S. 41; *Alejandrino* v. *Quezon*, 271 U. S. 528; *Brownlow* v.

*Where double citations appear in this brief, the first is to the exhibits annexed to the petition and the second is to the transcript of the record filed herewith.

Schwartz, 261 U. S. 216; *American Book Co.* v. *Kansas,* 193 U. S. 49; *Mills* v. *Green,* 159 U. S. 651.

If this be so, obviously no such decree could be validly entered at the instance of *Amici Curiae,* who expressly disavowed representing any party to the captioned litigation (Ex. 1, pp. 43-4, 48-9, 62; v. I, pp. 9, 13-4, 26). Although they admitted representing parties against which petitioner had asserted, in other litigation, that the *Root* judgments were *res adjudicata* (Ex. 1, pp. 43-4, 48-9; v. I, pp. 9, 13-4), *Amici Curiae* disclaimed that their clients were bound by such adjudication (Ex. 1, p. 49; v. I, p. 14) and thus put themselves in the position of complete strangers to the *Root* case. *Amici Curiae* as individuals had no legally cognizable interest in the suit; they represented no parties who even claimed to have such an interest. They appeared, by their own admission, solely as attorneys-at-law who were interested in aiding the court in an investigation *pro bono publico* (Ex. 1, pp. 44-8; v. I, pp. 9-13) and whose clients might gain, from the setting aside of the *Root* judgments, exemption from the claim in suits against them by petitioner that the *Root* judgments were *res adjudicata* of their liability (Ex. 1, pp. 43-4, 48-9; v. I, pp. 9, 13). *Amici Curiae,* in their initial presentation of themselves to the Court of Appeals on June 5, 1941, expressed the gravest doubt as to what, if any, relief they were legally entitled (Ex. 1, pp. 46-52, 60-4; v. I, pp. 12-7, 24-8).

In a very real legal sense *Amici Curiae,* far from commencing or intervening in a legally justiciable case or controversy under the Constitution, were mere interlopers.

If then *Amici Curiae,* in instituting this purported *original* proceeding in the Court of Appeals, did not set in motion the machinery of arbitrament of a legally justiciable

controversy under the Constitution, and if, in the absence of adverse parties and such an actual controversy, the Court of Appeals was without jurisdiction to enter a judgment or to tax costs, what then was the function of the proceeding? It appears that it could have been no more—and was recognized by the Master as being no more (Ex. 12, p. 174; v. I, p. 133)—than an investigation by the Court of Appeals of its membership and of officers of the court practicing before it. We may concede, *arguendo*, that the Court of Appeals had such an inherent power. But this is very far from conferring upon the Court of Appeals jurisdiction to determine—particularly in the informal, non-judicial mode adopted by the Master—whether or not the judgments in the *Root* case were or were not tainted with fraud. We submit most earnestly that that court was without power to impugn those judgments in an *original* proceeding commenced therein by non-parties to the action who had no legally cognizable interest in the controversy and, therefore, could not become parties even as intervenors.

The order of the Court of Appeals, entered November 26, 1941, by which the Master was appointed, recognized by its very terms the non-justiciable nature of the controversy. It invested the Master with authority to "examine" and "investigate" and authorized and directed him (Ex. 10, p. 135; v. I, p. 95)

> "to request the Department of Justice to make available to him as an officer of this court the records, documents and other evidence in the possession of such Department, whether developed by its Bureau of Investigation in its inquiries, or by the prosecuting attorneys of the Department in grand jury inquiries, or otherwise, bearing upon the matters

> hereby referred to him, and also to request (if such request be necessary) the Attorney General of the United States or the United States District Courts in which the said grand jury proceedings in the Cities of New York and Philadelphia took place, to make available to him as an officer of this court a stenographic transcript of the said proceedings."

As previously stated, the Master himself recognized that the proceeding was non-judicial and the controversy non-justiciable, for he observed (Ex. 12, p. 174; v. I, p. 133):

> "I do not think that the *investigation**—for that is all it is—should be conducted strictly according to the rules of evidence in *litigation*."

We submit that the investigation, apart from the power of the Court of Appeals to discipline an officer of the court, was no more judicially cognizable than a Congressional investigation would be. In the case of *In re Pacific Ry. Com'n.*, 32 Fed. 241 (cited and quoted with approval by this Court in *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227), it appeared that Congress had ordered an investigation of certain railroads and had authorized the Commissioners to seek aid of the Federal courts in carrying out their investigation. The Commissioners asserted that they were not bound by rules of evidence in the course of their investigation (just as the Master did in the proceeding under attack) and received *ex parte* statements and information of every character which they deemed relevant to the inquiry (identically as the Master did in the proceeding under attack [Ex. 11, pp. 140-1; Ex. 12, pp. 142-53; Ex. 13, pp. 182-247; Ex. 14, pp. 250-1; v. I, pp. 100-1, 102-13; v. VI, pp. 2240-2306; v. VIII, p. 3518-9]).

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*All italics supplied unless otherwise noted.

The Circuit Court declined to aid or implement such a proceeding, particularly one in which the rules of evidence applicable to a legal court proceeding had been disregarded, Mr. Justice Field (then on Circuit) saying (p. 258):

> "The federal courts, under the constitution, cannot be made the aids to any investigation by a commission or a committee into the affairs of any one. *If rights are to be protected or wrongs redressed by any investigation, it must be conducted by regular proceedings in the courts of justice in cases authorized by the constitution.*"

As we have previously stated, petitioner does not seek to save the *Root* judgments; it has consented that they be set aside and the cases reargued *de novo* even though the Court of Appeals had no power to set them aside in the instant proceeding. Petitioner still consents that they may be set aside. Of course, petitioner realizes that it cannot confer jurisdiction upon the Court of Appeals by such a consent and the offer to set aside, therefore, was necessarily predicated upon the other party to the original controversy, namely, Root, joining in the request and taking advantage of petitioner's offer to it to set aside the settlement made with Root, set aside the judgments, reargue the appeals and preserve to Root all of the advantages of the settlement in the event the Court of Appeals should again confirm the judgment of the District Court. The failure of Root to avail itself of this offer merely emphasizes the lacuna of adverse parties necessary to the existence of a justiciable case or controversy.

Petitioner most earnestly submits, therefore, that, until a controversy legally cognizable by the courts has been commenced and until a trial of the issues therein has been con-

ducted in accordance with the recognized principles of law governing such cases, it should not be tainted with an *adjudication* of fraud. It is prepared to litigate such a case upon the merits in accordance with law and to be bound by the outcome thereof. To the time of the writing of this brief, it has not had its constitutional day in court.

POINT II

The Court of Appeals, in directing the payment by your petitioner of the compensation and expenses of *Amici Curiae*, acted contrary to the decisions of this Court and of other Circuit Courts of Appeal.

Since the instant proceeding did not constitute a legally cognizable case or controversy of which the Court of Appeals could take jurisdiction, such court was manifestly without power to enter an order therein directing the payment by your petitioner of $154,606.57 as compensation to and expenses of *Amici Curiae*. It is well established that if a federal court is without jurisdiction to hear and determine a matter upon the merits, it lacks jurisdiction for all purposes, including the entry of a judgment for costs. Indeed, this Court has held that where the court lacks jurisdiction of a cause on the merits, it may not award costs even to the party successfully asserting the lack of jurisdiction. *Lion Bonding Co.* v. *Karatz*, 262 U. S. 640; *Citizens' Bank* v. *Cannon*, 164 U. S. 319. See also *Smyth* v. *Asphalt Belt Ry.*, 267 U. S. 326; *Blacklock* v. *Small*, 127 U. S. 96; *Humboldt Lovelock Irr. Light & Power Co.* v. *Smith*, 28 F. Supp. 421 (D. C. Nev.).

The Court of Appeals, therefore, was without jurisdiction or power to enter its order of December 29, 1944, directing that *Amici Curiae* be allowed the sum of $100,000

as compensation for their services in the instant investigation and the sum of $54,606.57 as expenses incurred by them in such investigation, and ordering that the total sum of $154,606.57 be taxed against your petitioner, together with costs.

Even if it be assumed, *arguendo*, that the Court of Appeals had jurisdiction to enter its order of December 29, 1944, no authority, federal or otherwise, has been found which sanctions the allowance of counsel fees and expenses to an *amicus curiae*. Existing precedents are quite to the contrary. *Lake & Co., Inc.* v. *King County*, 4 Wash. (2d) 651, 104 P. (2d) 599, *cert. den.* 311 U. S. 715; *Kraus* v. *State*, 102 Neb. 690, 169 N. W. 3. In the present investigation *Amici Curiae* concededly represented private interests, not parties to the *Root* case (Ex. 1, pp. 36, 43-4; v. I, pp. 3, 9; v. IV, pp. 1494-5). It is to these clients, in whose interests *Amici Curiae* instituted this investigation, that the latter must look for compensation.

Again assuming, *arguendo*, that the Court of Appeals had jurisdiction to enter its order of December 29, 1944, its award of counsel fees and expenses to *Amici Curiae* is contrary to statute and to the decisions of this Court and of other Circuit Courts of Appeal.

By Act of February 19, 1897, 28 Stat. 536, c. 263, 28 U. S. C. A. §543, Congress, in effect, granted to this Court the power to fix the costs and fees in each Circuit Court of Appeals. Pursuant thereto, this Court promulgated an order, effective March 15, 1941, establishing a table of fees and costs for the Circuit Courts of Appeal which may not be exceeded by those courts. In conformity with such order, Section 8 of Rule 37 of the Rules of the Circuit Court of Appeals for the Third Circuit specifies the "fees and

costs" which have been established by that court. The compensation and expenses allowed to *Amici Curiae* by the order of the Court of Appeals, entered December 29, 1944, grossly exceed those provided by the order of this Court, effective March 15, 1941.

If it should be held, despite the foregoing statute and order of this Court, that the Court of Appeals is vested with the equitable power of a federal district court to grant counsel fees and costs between solicitor and client, such exceptional allowances are limited to cases where a fund, in the hands of the court, has been created or preserved by a party to the litigation for the benefit of himself and others similarly situated. In these instances, the allowance is a charge upon the fund, and not against the adverse party. *Trustees* v. *Greenough*, 105 U. S. 527; *Gold Dust Corporation* v. *Hoffenberg*, 2 Cir., 87 F. (2d) 451; *Standard Lumber Co.* v. *Interstate Trust Co.*, 5 Cir., 82 F. (2d) 346, *cert. den.* 299 U. S. 545.

In this investigation, *Amici Curiae* have neither created nor preserved any fund on which counsel fees and expenses may be made a charge. They have represented no one but their own clients, and have not benefited Universal, its stockholders or creditors. Under these circumstances, they must look for compensation and reimbursement to those whom they have represented and who have enjoyed the fruits of their labors.

POINT III

The question here involved is of public interest and should be resolved by this Court.

The propriety of the Court of Appeals conducting the instant investigation captioned in the consolidated cause

entitled "*Root Refining Company, Defendant-Appellant, vs. Universal Oil Products Company, Plaintiff-Appellee*", at the behest of attorneys termed *Amici Curiae*, without the presence of one of the two parties to the original litigation, is a matter of public interest. In ordering the investigation in question and in directing the Master in the conduct of that investigation to examine grand jury minutes, *ex parte* statements and other material, whether prejudicial or not, at his own pleasure and without affording counsel for your petitioner an opportunity to examine such evidence, and in entering an order upon findings of fact which may well have been based, at least in part, upon such evidence, the Court of Appeals adopted a procedure so contrary to accepted standards of judicial action as to constitute a deprivation of your petitioner's property without due process of law and require, in the public interest, a review by this Court.

CONCLUSION

For the foregoing reasons, it is submitted that the petition should be allowed and the order of December 29, 1944, purported to have been entered by the Circuit Court of Appeals for the Third Circuit in the instant proceeding should be reviewed and reversed.

Respectfully submitted,

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JOHN R. MCCULLOUGH,
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March 16 1945.

SUPREME COURT OF THE UNITED STATES.

Nos. 48 and 64.—October Term, 1945.

Universal Oil Products Company, Petitioner, vs. Root Refining Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
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Universal Oil Products Company, Petitioner, vs. Root Refining Company.	
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[June 10, 1946.]

Mr. Justice Frankfurter delivered the opinion of the Court.

Petitioner, Universal Oil Products Company, is a patent-holding and licensing company. In 1929 and 1931, it brought suits for infringement against the Winkler-Koch Engineering Co. and the Root Refining Company, respectively. The suits were consolidated, the validity of the patents sustained, and decrees for their infringement entered. 6 F. Supp. 763. The Circuit Court of Appeals for the Third Circuit, in an opinion by Judge J. Warren Davis, affirmed the decrees, 78 F. 2d 991, and this Court, in October, 1935, denied *certiorari*. *Root Refining Co.* v. *Universal Oil Products Co.*, 296 U. S. 626. Both before and after the decision in the *Root* case, Universal started similar infringement suits against other oil companies. Universal invoked the Root decisions as *res judicata* against some of these companies. It maintained that, although these companies had not been parties of record in the *Root* suit, they were members of a "patent club," to which Root belonged and which had been formed to pool money for the defense of any member of the "club" in an infringement suit against it, and that the *Root* case had been defended by the attorneys for the "patent club." Universal contended that these circumstances made the other oil companies substantial parties to the Root litigation and as such bound by its outcome.

On June 2, 1941, during the pendency of these latter cases, attorneys who had represented Root and were representing the other oil companies advised the attorneys of the petitioner that on June 5, 1941, they would bring to the attention of the judges

of the Third Circuit Court of Appeals the circumstances surrounding the appeal in the *Root* case, and, more particularly, the relations of one Morgan S. Kaufman to the outcome of that appeal, and invited petitioner's attorneys to attend. At the hearing on June 5, the moving attorneys suggested, in substance, that testimony taken at the trial of Judge Davis pointed to bribery of Judge Davis by Kaufman to secure a decision favorable to Universal in the *Root* appeal. They urged an investigation of the questionable features surrounding affirmance of the *Root* decree, but expressed doubt as to the capacity in which they could formally make such a request of the Court. Their difficulty was due to the fact that after this Court had denied *certiorari* in the *Root* case, Root had settled its controversy with Universal and was unwilling to disturb the agreement by an attempt to reopen the law suit. The other oil companies who were in litigation with Root insisted that they were neither formal nor substantial parties to the *Root* case. And so their attorneys, who were the attorneys in the *Root* litigation and the moving attorneys in the present proceedings, could not move on their behalf to have the *Root* decree vacated. But these other oil companies had an interest in the *Root* decree since it might be used in pending cases to their disadvantage. Universal offered to consent to a reargument of the *Root* case and to preserve to the Root Company the benefits of the existing agreement, even if Universal should prevail upon reargument. Throughout these proceeding Universal stood ready to carry out this offer, but nothing ever came of it, presumably because Root was not represented at these hearings and the other oil companies were not parties of record in the original litigation.

The dilemma of the attorneys who initiated these proceedings to set aside a fraudulent judgment but could not speak for any client prepared to come before the court as a party in interest, was resolved by a suggestion from the presiding judge of the Circuit Court of Appeals. The suggestion was that the court would accept the services of these attorneys as *amici curiae*. Accordingly, they offered themselves in that role. Upon their acceptance as such by the court they asked for the appointment of a master to investigate the *Root* appeal. While they thus proceeded as *amici* they stated quite candidly that they were also concerned with the interests of their clients, the oil companies in

pending litigation. As a matter of law, however, their status was only that of *amici*, for their clients did not subject themselves to the court's jurisdiction. The relation of these lawyers to the court, after it recognized them as *amici*, remained throughout only that of *amici*.

A master was appointed and he conducted an extensive investigation. He examined records in the possession of the United States Attorney for the Southern District of New York, the records of proceedings before a Philadelphia grand jury, bank records, and various statements of interested parties. From this mass of material, he selected those documents which he deemed appropriate for submission to the inspection of the *amici* and of counsel for Universal. Witnesses were also heard and petitioner was given the right to cross-examine. But the investigation was not governed by the customary rules of trial procedure. Petitioner's counsel duly excepted to the manner in which the investigation was being conducted, "if it were to involve any property rights of our clients, including the validity of any judgment . . ." The master evidently did not view the proceedings in the light of an adversary litigation. He ruled "that the investigation—for that is all it is—should [not] be conducted strictly according to the rules of evidence in litigation." At the conclusion of this investigation, the master rendered a report in which he concluded "that there was in connection with this case such fraud as tainted and invalidated the judgments" in the *Root* appeal.

On the basis of this conclusion, the Court of Appeals on June 15, 1944, entered an order directing that the judgments be vacated and the cause be reargued. The relief thus granted was that to which petitioner had consented before the investigation got under way. On July 24, 1944, the *amici* applied to the court below for an order directing that the expenses and compensation of the master be taxed against Universal. In view of the fact that Universal appeared and participated in the investigation before the master, with acquiescing knowledge that the master's fees and expenses would be assessed by the court, we do not disturb the taxation of the master's fees and expenses. The *amici* also asked the court to assess against Universal their expenses and reasonable attorneys' fees. The court awarded $54,606.57 in expenses, part of which was for the amount they had advanced in payment

to the master, and $100,000 as compensation for their services. These amounts had in fact already been paid to the attorneys by their oil company clients. The awards thus constituted an order for reimbursement of the clients by Universal. The case was heard by the court *en banc*, and two of the judges thought that the *amici* were only entitled to a compensation of $25,000. 147 F. 2d 259. Questions of importance in judicial administration were obviously involved by the disposition below, and so we brought the case here. 324 U. S. 839.

The inherent power of a federal court to investigate whether a judgment was obtained by fraud, is beyond question. *Hazel-Atlas Co.* v. *Hartford Empire Co.*, 322 U. S. 238. The power to unearth such a fraud is the power to unearth it effectively. Accordingly, a federal court may bring before it by appropriate means all those who may be affected by the outcome of its investigation. But if the rights of parties are to be adjudicated in such an investigation, the usual safeguards of adversary proceedings must be observed. No doubt, if the court finds after a proper hearing that fraud has been practiced upon it, or that the very temple of justice has been defiled, the entire cost of the proceedings could justly be assessed against the guilty parties. Such is precisely a situation where "for dominating reasons of justice" a court may assess counsel fees as part of the taxable costs. *Sprague* v. *Ticonic National Bank*, 307 U. S. 161, 167. But, obviously, a court cannot deprive a successful party of his judgment without a proper hearing. This question is not before us, except as it bears on the order allowing attorneys' fees and costs. But if the judgment could not be nullified without adequate opportunity to be heard in a proper contest, neither is it just to assess the fees of attorneys and their expenses in conducting an investigation where petitioner throughout objected to the character of the investigation if it was to be used as a basis for adjudicating rights.

The case may readily be disposed of on a narrower ground. No doubt, a court that undertakes an investigation of fraud upon it may avail itself, as did the court below, of *amici* to represent the public interest in the administration of justice. But compensation is not the normal reward of those who offer such services. After all, a federal court can always call on law officers of the United States to serve as *amici*. Here the *amici* also represented

substantial private interests. Their clients were interested in vacating the *Root* judgment though they would not subject themselves to the court's jurisdiction and the hazards of an adverse determination. While the *amici* formally served the court, they were in fact in the pay of private clients. *Amici* selected by the court to vindicate its honor ordinarily ought not be in the service of those having private interests in the outcome. Certainly it is not consonant with that regard for fastidiousness which should govern a court of equity, to award fees and costs of *amici curiae* who have already been compensated by private clients so that these be reimbursed for what they voluntarily paid.

In No. 48, the judgment is reversed and remanded to the Circuit Court of Appeals for the entry of a judgment in conformity with this opinion.

In No. 64, the writ of *certiorari* invoked under § 262 of the Judicial Code, 28 U. S. C. § 377, is dismissed.

Mr. Justice BLACK concurs in the narrower ground of the opinion.

Mr. Justice MURPHY and Mr. Justice JACKSON took no part in the consideration or decision of this case.